

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILLIAM TEASDALE and TIMOTHY  
MASSEY, M.D., Washington residents

Plaintiff,

v.

AIG DOMESTIC CLAIMS, INC.;  
LEXINGTON INSURANCE COMPANY;  
CHRIS NEAL; a Washington Resident; and  
UNKNOWN JOHN DOES,

Defendants.

NO: 2:09-cv-00727 RSM

PLAINTIFFS' MOTION FOR RELIEF  
FROM DEADLINE RE AIG DOMESTIC  
CLAIMS' MOTION TO DISMISS

NOTED ON MOTION CALENDAR:

August 10, 2009

**I. RELIEF REQUESTED**

Pursuant to Local Rules W.D. Wash. CR 7(d)(2)(a), Plaintiffs hereby move for relief from the Deadline to file a Response to the Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) filed by Defendant AIG Domestic Claims, Inc. The motion is noted for August 21, 2009, with the Plaintiffs response due August 17, 2009. The plaintiffs ask the Court to stay briefing and the hearing on the motion, until such time as the Court issues an order on Plaintiff's Motion to Remand to State Court, which Motion has been fully briefed, and noted for hearing on July 17, 2009. An Order granting the Motion to Remand would result in a remand to state court for absence of subject matter jurisdiction, and moot Defendant AIG's

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1 Motion to Dismiss. In the event the Court denies the Motion to Remand, plaintiffs request that  
 2 the Court issue a new briefing schedule and hearing date for AIG's Motion to Dismiss.

## 3 **II. FACTUAL BACKGROUND**

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 5 This case was originally filed in the King County Superior Court for the state of  
 6 Washington on April 21, 2009. Dkt. 1, Ex. A (State Court Complaint). Defendants AIG  
 7 Domestic Claims Inc., and Lexington Insurance Company removed the case to federal court  
 8 May 22, 2009, alleging diversity of citizenship under 28 U.S.C. §1332 as the sole basis of  
 9 federal jurisdiction. Dkt. 1 (Notice of Removal). Defendants alleged that Defendant  
 10 Christopher Neal, a Washington resident whose presence destroys diversity, was fraudulently  
 11 joined. Dkt. 1 (Notice of Removal at 3).

12  
 13 On June 22, 2009, plaintiffs filed a motion to remand the case to state court. (Dkt. 5).  
 14 The motion asserts that this Court is without jurisdiction because of the absence of diversity,  
 15 and that defendants have failed to demonstrate that Mr. Neal was fraudulently joined. The  
 16 motion was noted for July 17, 2009. The defendants responded on July 13, 2009 (Dkt. 9), and  
 17 plaintiffs replied on July 17, 2009. (Dkt. 11).

18  
 19 Defendant AIG Domestic Claims Inc., has never answered the Complaint. On July 27,  
 20 2009, it filed the present motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Motion  
 21 is noted for August 21, 2009 with plaintiffs' response due August 17, 2009. (Dkt. 14).

## 22 **III. LEGAL AUTHORITY**

23 CR 7(d)(2)(A), Local Rules for the Western District of Washington, provides:

24 (2) The following motions shall be noted for consideration no earlier than seven  
 25 judicial days after filing:

26 (A) motions for relief from a deadline or limit imposed by an order,  
 27 federal rule, or local rule ....

28 Subject matter jurisdiction under 28 U.S.C. §1332(c) requires complete diversity of  
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1 citizenship. The plaintiffs have moved to remand this case to the state court because of the  
 2 absence of subject matter jurisdiction. Federal courts strictly enforce subject matter jurisdiction  
 3 limitations. A challenge to jurisdiction may be made at any time, even for the first time on  
 4 appeal and after a trial and jury verdict in the trial court. See *Kuntz v. Lamar Corp.*, 385 F.3d  
 5 1177, 1181 (9<sup>th</sup> Cir. 2004).  
 6

7 In this case, a challenge to this Court's subject matter jurisdiction has been fully briefed  
 8 and noted for hearing. A determination that this Court lacks subject matter jurisdiction will  
 9 render AIG's motion to dismiss moot, and would necessarily invalidate any decision made  
 10 regarding such a motion. See, e.g., *American Fire & Cas. Co. v. Finn*, 341 U.S. 6, 71 S.Ct. 534  
 11 (1951) (invalidating judgment where challenge to subject matter jurisdiction made for the first  
 12 time in the Supreme Court, by defendant which had originally removed the case to federal court  
 13 on grounds of diversity jurisdiction).  
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16 If the Court determines that subject matter jurisdiction exists, then the delay occasioned  
 17 by this motion will not unduly delay proceedings in this case, which is in its early stages.  
 18

#### 19 **IV. CONCLUSION**

20 \_\_\_\_\_For the reasons stated herein, the plaintiffs respectfully request that the Court stay  
 21 further briefing on Defendant AIG Domestic Claims, Inc.'s Motion to Dismiss, pending the  
 22 decision of the Court on Plaintiffs' Motion to Remand.  
 23  
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25 In the event that the Court denies Plaintiffs' Motion to Remand, Plaintiffs request  
 26 that the Court set a new hearing date and briefing schedule for Defendant AIG Domestic  
 27 Claims, Inc.'s Motion to Dismiss.  
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1 Dated this 30<sup>th</sup> day of July, 2009.

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PLAINTIFFS' MOTION FOR RELIEF  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of July, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such to the following:

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Dated this 30<sup>th</sup> day of July, 2009, at Seattle, Washington.

s/ Catherine M. Galfano  
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